COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

"A Tradition of Service"

OFFICE CORRESPONDENCE

DATE: October 12, 2006

FILE NO.: SH2150710

FROM: JOHNNY G. JURADO, COMMANDER
COMMITTEE CHAIRPERSON

TO: KARYN MANNIS, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: **EXECUTIVE FORCE REVIEW COMMITTEE DISPOSITION:**

DEPUTY NOE GARCIA #[redacted]
DEPUTY JOSE ROJAS #[redacted]
CENTURY STATION

On July 7, 2005 at 1140 hours, Century Station Deputies Rojas and Garcia responded to a disturbance call at a car wash located at 234 East El Segundo Boulevard. The three male blacks that were identified as creating the disturbance had already left the scene. Deputies Rojas and Garcia then patrolled the area in an attempt to locate them. As the deputies drove northbound on Cook Street, they saw a male Hispanic (Suspect Padilla) walking southbound on the west sidewalk.

Suspect Padilla looked directly at the deputies and started running. He jumped over a wrought iron fence in the front yard of [redacted] ran down the driveway and into the backyard. Due to the suspect's actions, the deputies stopped their radio car to investigate. They walked through an open gate and as the deputies were walking down the driveway, they heard noises coming from the backyard. They drew their duty weapons and as they reached the southwest corner of the house, they saw Suspect Padilla standing alongside a rear wall next to a metal shed in the corner of the backyard. The suspect turned, raised a handgun and pointed it at the deputies. Fearing for their safety, both deputies fired several rounds at the suspect.

After the deputies fired, the suspect went between the shed and the block wall and out of their view. The deputies could hear the suspect behind the shed. Suddenly, they saw the suspect as he started to climb the block wall behind the shed. When the suspect reached the top of the wall, he turned and again pointed the handgun at the deputies. The deputies, again believing the suspect was going to shoot them, fired several more rounds at the suspect. The suspect then went over the wall and out of view.

The deputies broadcast the shooting and coordinated responding units to contain the area. During the subsequent search, the suspect was located in the rear yard of [redacted] Suspect Padilla sustained a gunshot wound to the head and two gunshot wounds to the lower torso. He was pronounced dead at the scene.

Suspect Padilla was identified as a "Barrio-13" gang member, and was on [redacted] A Beretta, 92FS, semi-automatic pistol, was recovered at the scene. It contained one live

round in the chamber, and fourteen live rounds in the magazine. No deputies were injured.

On October 12, 2006, the Executive Force Review Committee convened and conducted a review regarding the facts of this case. The applicable policies that were evaluated by the committee were: MMP § 3-01/025.00: Use of Force; MMP § 3-01/025.30: Use of Firearms and Deadly Force; MMP § 3-01/025.10: Unreasonable Force; and MMP § 3-01/050.10: Performance to Standards. Concerning:

MMP § 3-01/025.00: Use of Force, MMP § 3-01/025.30: Use of Firearms and Deadly Force, and MMP § 3-01/025.10: Unreasonable Force, the Committee determined that the force used by the deputy was reasonable and necessary and in compliance with Department policy. MMP § 3-01/050.10: Performance to Standards, the Committee determined that the tactics employed by the deputies in this incident were within Department Policy.

Johnny G. Jurado, Commander



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
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JANICE L. MAURIZI • Director

April 19, 2006

Captain Raymond Peavy
Los Angeles County Sheriff's Department
Homicide Bureau
15747 Rickenbacker Road
Los Angeles, California 90040

Dear Captain Peavy:

Re: J.S.I.D. File No: 05-0408
L.A.S.D. File No: 005-11602-2141-013

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the circumstances surrounding the fatal shooting of Johnny Padilla on July 7, 2005, by Los Angeles County Sheriff's Department (LASD) Deputies Noe Garcia and Jesse Rojas. We have concluded that the aforementioned personnel acted lawfully in self-defense and in defense of others.

The following analysis is based upon reports prepared by Detectives Steve Lankford and Rick Graves of the LASD Homicide Bureau and submitted to this office on December 20, 2005. The District Attorney Command Post was notified of this incident on July 7, 2005, at 1:16 p.m. Deputy District Attorney Valerie Aenlle-Rocha and District Attorney Senior Investigator [redacted] of the District Attorney Response Team arrived at the scene at approximately 2:20 p.m. They were given a briefing and a walk through of the scene by LASD Lieutenant Daniel Rosenberg. No compelled statements were reviewed for this analysis.

FACTUAL ANALYSIS

On July 7, 2005, Deputies Garcia and Rojas were assigned to a two-man patrol unit, driving a black and white patrol car, out of the LASD Century Station. Deputy Garcia was the driver. At approximately 11:35 a.m. the deputies responded to a "disturbance call" at a car wash located at 234 El Segundo Avenue. The disturbance was described as three black males harassing customers at the car wash.

When the deputies arrived at the car wash, the persons creating the disturbance had already left the location, so the deputies drove on adjoining streets to see if there was anyone who fit their description. As they drove south on the 12900 block of Cook Street, the deputies saw Johnny

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Padilla walking south on the west side of the street. They observed that Padilla, after he looked in the direction of their patrol car, suddenly changed his direction and jumped over a 4 feet high concrete wall topped with iron spikes, into the front yard of [redacted] He then disappeared from the deputies' view. Deputy Garcia stopped the patrol car in front of [redacted] and, in the belief that criminal activity might be afoot, both deputies exited the patrol car to investigate further.

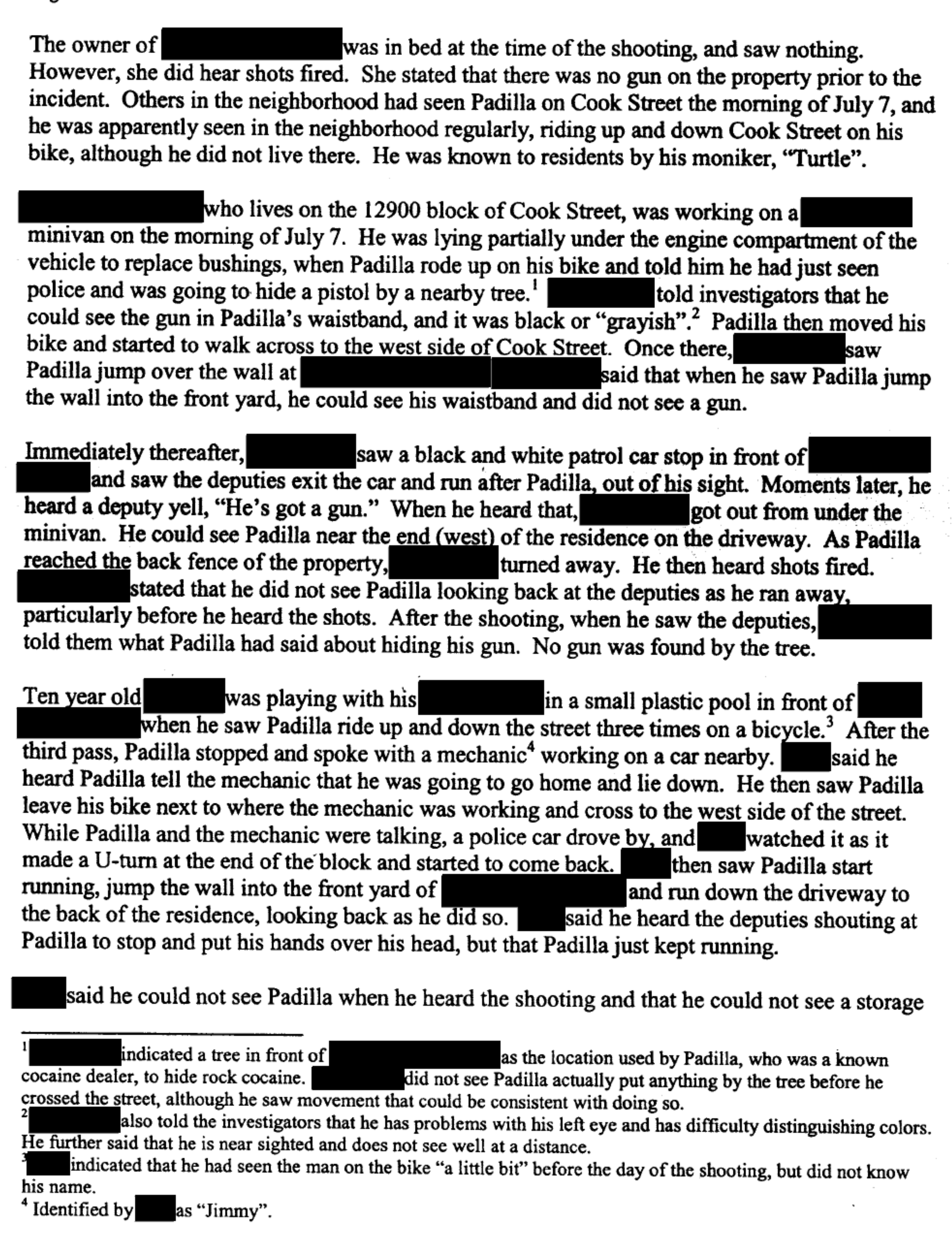
Deputy Garcia noticed that the driveway gate leading to the front yard of [redacted] was unlocked, so he slid it open and both deputies walked into the front yard. Using the house as cover, the deputies walked side-by-side down the driveway which paralleled the side of the house and led to an open back yard. As they neared the back yard, the deputies could hear the sounds of metal rattling in the yard but could not see who or what was causing the sounds. Both deputies unholstered their service weapons.

When the deputies reached the southwest corner of the house, they both saw Padilla in the back yard. When Deputy Rojas first saw him, Padilla was standing at the corner of a shed, facing the shed but with his head turned and looking toward the driveway. Upon seeing Deputy Rojas, Padilla quickly extended his right arm and pointed a chrome handgun in Deputy Rojas' direction. Fearing that he and his partner officer were about to be fired upon, Deputy Rojas fired 2 or 3 rounds at Padilla and heard Deputy Garcia, standing next to him, also fire several rounds.

When Deputy Garcia first saw Padilla, the latter had taken a tactical stance and was extending his right arm, pointing a chrome semi-automatic handgun in the direction of the deputies. Fearing for his life and that of his partner officer, Deputy Garcia fired several rounds at Padilla.

Padilla moved between the shed and the west wall of the property, momentarily disappearing from the sight of both deputies. He then reappeared seconds later climbing the west wall of the property. When he reached the top of the wall, Padilla extended his right arm back, again pointing a handgun in the direction of the deputies. Both deputies, again fearing for their lives, fired several rounds at Padilla. Padilla then dropped out of sight on the other side of the wall, into the greenbelt area directly behind [redacted]

Deputies Rojas and Garcia retreated to the front of [redacted] and requested additional officers to respond to their location. A perimeter was set up, a canine unit was brought in, and an air unit was requested to assist in locating Padilla. The air unit was first to observe Padilla. He was lying in heavy vegetation in a greenbelt area directly below the place where he was last seen on the top of the wall. When contacted by the canine unit, he was unresponsive and observed to have sustained a gunshot wound to his head. He was given immediate medical aid to no avail, and was pronounced dead at the scene. A Beretta 92FS 9mm semiautomatic handgun, safety off, with one 9mm Luger cartridge in the chamber and fourteen in the magazine, was recovered in the yard of [redacted] at the foot of the west wall just below where Padilla was last seen by Deputies Garcia and Rojas.



The owner of [redacted] was in bed at the time of the shooting, and saw nothing. However, she did hear shots fired. She stated that there was no gun on the property prior to the incident. Others in the neighborhood had seen Padilla on Cook Street the morning of July 7, and he was apparently seen in the neighborhood regularly, riding up and down Cook Street on his bike, although he did not live there. He was known to residents by his moniker, "Turtle".

[redacted] who lives on the 12900 block of Cook Street, was working on a [redacted] minivan on the morning of July 7. He was lying partially under the engine compartment of the vehicle to replace bushings, when Padilla rode up on his bike and told him he had just seen police and was going to hide a pistol by a nearby tree.[1] [redacted] told investigators that he could see the gun in Padilla's waistband, and it was black or "grayish".[2] Padilla then moved his bike and started to walk across to the west side of Cook Street. Once there, [redacted] saw Padilla jump over the wall at [redacted] said that when he saw Padilla jump the wall into the front yard, he could see his waistband and did not see a gun.

Immediately thereafter, [redacted] saw a black and white patrol car stop in front of [redacted] and saw the deputies exit the car and run after Padilla, out of his sight. Moments later, he heard a deputy yell, "He's got a gun." When he heard that, [redacted] got out from under the minivan. He could see Padilla near the end (west) of the residence on the driveway. As Padilla reached the back fence of the property, [redacted] turned away. He then heard shots fired. [redacted] stated that he did not see Padilla looking back at the deputies as he ran away, particularly before he heard the shots. After the shooting, when he saw the deputies, [redacted] told them what Padilla had said about hiding his gun. No gun was found by the tree.

Ten year old [redacted] was playing with his [redacted] in a small plastic pool in front of [redacted] when he saw Padilla ride up and down the street three times on a bicycle.[3] After the third pass, Padilla stopped and spoke with a mechanic[4] working on a car nearby. [redacted] said he heard Padilla tell the mechanic that he was going to go home and lie down. He then saw Padilla leave his bike next to where the mechanic was working and cross to the west side of the street. While Padilla and the mechanic were talking, a police car drove by, and [redacted] watched it as it made a U-turn at the end of the block and started to come back. [redacted] then saw Padilla start running, jump the wall into the front yard of [redacted] and run down the driveway to the back of the residence, looking back as he did so. [redacted] said he heard the deputies shouting at Padilla to stop and put his hands over his head, but that Padilla just kept running.

[redacted] said he could not see Padilla when he heard the shooting and that he could not see a storage

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[1] [redacted] indicated a tree in front of [redacted] as the location used by Padilla, who was a known cocaine dealer, to hide rock cocaine. [redacted] did not see Padilla actually put anything by the tree before he crossed the street, although he saw movement that could be consistent with doing so.

[2] [redacted] also told the investigators that he has problems with his left eye and has difficulty distinguishing colors. He further said that he is near sighted and does not see well at a distance.

[3] [redacted] indicated that he had seen the man on the bike "a little bit" before the day of the shooting, but did not know his name.

[4] Identified by [redacted] as "Jimmy".

shed or a large tree trunk from his location, although he could see the large upper branches of the tree over the roofline of the house. However, he said that after he heard the shooting he could see Padilla attempting to scale the back wall, succeeding after several attempts. [redacted] indicated that he thought he heard about six to eight gunshots, all before Padilla succeeded in getting over the wall. [redacted] did not see a gun in Padilla's hand.

The coroner's report shows that Padilla sustained 4 gunshot wounds. Two of the wounds – to the head and the abdominal cavity – were fatal.

CONCLUSION:

In protecting oneself or another, a person may use all force and means that he believes to be reasonably necessary and that would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions—Criminal (CALJIC) 5.30; 5.32.

If one is confronted by the appearance of danger that one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. Actual danger is not necessary to justify the use of deadly force in self-defense. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal. App. 2d 577.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . .The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." Graham v. Connor (1989) 490 U.S. 386, 396-397.

The evidence gathered in this case shows that deputies Garcia and Rojas were confronted with a fleeing suspect who turned and pointed a gun directly at them – first while in front of the storage shed and second while climbing the back fence. Each deputy, fearing for his own life and that of his partner, fired at Padilla.

Although neither [redacted] nor [redacted] observed Padilla pointing a gun at the deputies, [redacted] confirms that Padilla had a gun on his person immediately before the deputies followed Padilla onto the property at [redacted] A loaded handgun was found immediately below the point at which Padilla scaled the back fence, and no gun was found where Padilla told [redacted] he planned to hide it. Furthermore, [redacted] admits to difficulty seeing distances and [redacted] says he could not see Padilla at the time he heard the shots. In all other respects, the observations of both [redacted] and [redacted] corroborate the circumstances described by Deputies Garcia and Rojas.

We conclude that Deputies Garcia and Rojas were confronted with imminent danger, and that they acted lawfully in self defense and defense of others when they used deadly force in response. We are therefore closing our file and will take no further action in this case.

Very truly yours,

STEVE COOLEY
District Attorney

By [signature]

ELIZABETH MUNISOGLU
Deputy District Attorney
(213)974-5034

c: Deputy Noe Garcia, [redacted]
Deputy Jesse Rojas, [redacted]